



City of Cambridge Police Department

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Robert C. Haas
Police Commissioner

Robert W. Healy
City Manager

To: Robert Healy, City Manager

From: Robert C. Haas, Police Commissioner

Date: September 9, 2010

Re: City Council Order 0-11, Impact of Decriminalization of Marijuana Possession

Sir:

The City Council has requested a report on how the decriminalization of the possession of one ounce or less of marijuana has impacted the Cambridge Police Department's law enforcement efforts in the City. In this memorandum, I will describe our enforcement efforts under the new law, the challenges that the new law has presented to our crime prevention efforts, and some suggestions to remedy those problems.

Issuance of Civil Citations for Possession of Marijuana

As you are aware, the statewide 2008 ballot initiative decriminalizing the possession of up to one ounce of marijuana or tetrahydrocannabinol (THC) (commonly referred to as hashish) went into effect as of January 2, 2009. The new law makes possession of an ounce or less of marijuana a civil offense, subjecting the offender to a civil penalty of \$100 and forfeiture of the marijuana. See M.G.L. c. 94C, § 32L. There are also different requirements for juvenile offenders, defined for these purposes as individuals under age 18. In addition to the civil penalty, parental notification is required, and juveniles are required to participate in a drug awareness program. Possession of greater than an ounce of marijuana, and possession of less than an ounce of marijuana with intent to distribute, remain criminal offenses subject to arrest without a warrant (and a search incident to arrest) under M.G.L. c. 94C, § 41.

The Cambridge Police Department's experience with enforcement of the new law shows that there is evidence of greater public consumption in Cambridge, particularly by the youth in the schools. Our statistics provide support for the anecdotal impressions of our officers. In 2009, only 5 juveniles (under age 18) were cited for possession of one ounce or less of marijuana. As of August 31, 2010, 13 juveniles have been cited this year – almost three times the pace of last year, with four months left in the calendar year. Our experience shows widespread misunderstanding about the legality of marijuana possession. Many youth appear to believe that possession of marijuana is legal. They do not understand that possession of marijuana is still illegal, but that small amounts are now only punishable by a civil fine.

Our adult citations for 2010 are also on pace to surpass the numbers from last year. In 2009, 21 adults were issued citations for possession of an ounce or less of marijuana. This year, as of August 31, 2010, we have issued 15 citations so far.

Some facts about Marijuana

Most people involved in law enforcement opposed the decriminalization of small amounts of marijuana, for a host of reasons.

First, one ounce of marijuana is actually more than one would expect. I have attached a photograph of what an ounce looks like in a plastic baggie. It is a significant amount. An ounce of marijuana can be broken down into approximately 85 joints. Marijuana weighing less than one ounce can often be packaged for street level distribution in small, stamp sized bags. An ounce of marijuana is typically sold for approximately \$120 to \$130. It can be difficult to distinguish between marijuana that is intended for personal use from that which is intended for sale when dealing with these small amounts. Particularly since the passage of the new law, questions about the appropriate charge to issue against an offender (possession versus possession with intent to distribute) can be difficult to resolve.

Second, in recent years marijuana has become a more potent drug than it used to be. Its cultivation and propagation has evolved to the point where the plant now delivers much higher levels of THC to the consumer. Marijuana that is sold on the street tends to be of high quality and potency, which demands higher prices and profit to dealers. Likewise, marijuana tends to be a gateway drug, meaning that users tend to move on to more risk and unhealthy substances, like cocaine or heroin. Marijuana can also be laced with additives, like crack cocaine or PCP. PCP is particularly dangerous, as it is more deadly and can make the user more prone to violence.

Third, street level dealers and retail level dealers who sell marijuana are often also dealing other illicit drugs, such as cocaine. These types of dealers often resort to violence in order to protect their profit and turf. At the top of this pyramid is international and domestic organized crime and drug trafficking organizations. In general, much of the street level violence that occurs in most cities and towns, including Cambridge, can be attributed to street level drug

dealing. Indeed, the recent murder at Harvard University last year was the result of a marijuana transaction that turned deadly.

Enforcement Challenges in Cambridge

The new marijuana possession law has presented significant challenges to the Cambridge Police Department.

The open and public smoking of marijuana and hashish has increased and has prompted complaints from the public. This has a disruptive effect on the health and safety of the City. In some areas of the city, 364 Jefferson Circle and Jefferson Park in particular, people have been congregating outside and smoke marijuana. I would suggest that the City of Cambridge enact an ordinance that would prohibit smoking of marijuana or hashish in public places in Cambridge. For your convenience, I have attached a draft ordinance for your consideration.

In addition to the increase of open and public smoking of marijuana, officers have encountered difficulties in enforcing the civil citations for violating the new law. State law provides no legal recourse against an individual who refuses to provide his or her name upon a police officer's request, in response to the issuance of a citation for possession of an ounce or less of marijuana. This is highly problematic for our officers in enforcing the new law. Obtaining a verifiable name and address is essential in ensuring that offenders comply with the law. Likewise, with respect to juvenile offenders, the failure of a juvenile offender to provide a true name and address makes parental notification impossible. In other circumstances, police officers may charge individuals with a criminal offense for failing to provide their true name, see, for example, M.G.L. c. 268, § 34A (false name violation upon arrest); and M.G.L. c. 90, § 25 (refusal to provide name and address while operating motor vehicle).

I would therefore recommend that the City enact an ordinance that would make it an independent offense to refuse, upon a police officer's request, to give his or her true name or address when notified that a citation for a violation of M.G.L. c. 94C, § 32L. Like the ordinance prohibiting public smoking of marijuana, this ordinance would be enforced pursuant to M.G.L. c. 40, § 21D. I have attached a draft ordinance for your consideration.

Finally, the new law has made our drug enforcement efforts more challenging because serious drug dealers are often recreational users of marijuana. Without an ordinance specifically penalizing public consumption and the refusal to provide their true identities, police officers are prevented from collecting necessary intelligence to assist in monitoring the drug trade in Cambridge. This is a critical component of effective police work, particularly in the prevention of drug-related or gang-related violence.

If you have any questions, please feel free to contact me.

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WESTCO



0.10
oz
lb

Capacity: 5-lb x 0.1-oz
Weight Converter
for Postal Use

Display Hold
Push button
until
turns on/off

On/Zero

Cambridge Municipal Code

Section _____ Prohibition of Smoking Marijuana in Public Places

A. Public Consumption or Use of Marijuana Prohibited

No person shall smoke, consume, ingest or otherwise use marijuana or tetrahydrocannabinol (as defined in Chapter 94C, § 1, as amended) of the Massachusetts General Laws, on, in or upon any public way or upon any way to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, including but not limited to, parks, playgrounds, parking lots, public buildings, in or upon any bus or other conveyance operated by a common carrier, or in any place accessible to the public.

B. Consumption of Marijuana Prohibited on City Owned Property

No person shall consume or smoke marijuana on city owned property or within city owned buildings to which the public has a right of access. No person shall use or consume marijuana at any city-sponsored, private, or public event held on city-owned property or within city owned buildings.

C. Violations and Penalties

Any person who violates this section shall be subject to a fine in the amount of three hundred dollars (\$100) for each offense. Violations of this section shall be enforced by means of a non-criminal disposition pursuant to Massachusetts General Laws Chapter 40, §21D. Any fines imposed under the provisions of this section shall inure to the City of Cambridge. The Cambridge Police Department shall be the enforcing authority of this section.

D. Seizure of Marijuana

All marijuana consumed or being used in violation of this section shall be seized and safely held until final adjudication of the charge against the person arrested or summonsed before the Court, at which time it shall be destroyed in accordance with Massachusetts General Laws Chapter 94C, §47A.

E. Appeal

Any person upon whom a fine is imposed pursuant to this section shall have the right to appeal the imposition of such fine by making a written request within 21 days to the Clerk Magistrate for the Cambridge District Court.

Cambridge Municipal Code
Section _____ False Name or Address

Any person who, having been informed that a police officer intends to issue a citation for possession of an ounce or less of marijuana or tetrahydrocannabinol in violation of Massachusetts General Laws Chapter 94C, § 32L, or for public consumption of marijuana in violation of Cambridge Municipal Code Section _____, refuses upon the officer's request to give his or her true name and address, or who gives a false name or address, shall be subject to a fine in the amount of \$200. Violations of this section shall be enforced by means of a non-criminal disposition pursuant to Massachusetts General Laws Chapter 40, §21D. Any fines imposed under the provisions of this section shall inure to the City of Cambridge.